

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DOROTHY ALTHEA McCARTY,

Plaintiff,

CASE NO. 05-CV-10320

v.

DISTRICT JUDGE DAVID M. LAWSON
MAGISTRATE JUDGE CHARLES BINDER

JOHN DOE, *Head Official for the
State Treasury Department,*
PATRICIA CARUSO, *Director of
the Michigan Department of Corrections,*
JOHN DOE, *Warden of the Carson City
Correctional Facility,*
GENERAL MOTORS PENSION CENTER,
JOHN DOE, *Administrator of General
Motors Pension Center,*

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
PURSUANT TO RULE 41(b) OF THE
FEDERAL RULES OF CIVIL PROCEDURE

I. RECOMMENDATION

IT IS RECOMMENDED that the case be *sua sponte* **DISMISSED** for failure to serve process within the time period allowed under Rule 4(m) of the Federal Rules of Civil Procedure.

II. REPORT

This case was originally filed by three plaintiffs in December 2005. Plaintiffs paid the full filing fee. The case was *sua sponte* dismissed following screening and a judgment issued in favor of Defendants in November 2006. (Doc. 15.) Plaintiffs appealed to the U.S. Court of Appeals for the Sixth Circuit. The Sixth Circuit affirmed the dismissal of all claims brought by Plaintiffs

Wayne McCarty and Eddie Julian, and reversed the dismissal of the claim brought by Plaintiff Dorothy McCarty. *McCarty v. Doe*, 2008 WL 2660860 (6th Cir. July 7, 2008) (unpublished). On August 15, 2008, the case was restored to the Court's active docket and again referred to this magistrate judge for general pretrial case management. (Doc. 24.) Plaintiff Dorothy A. McCarty filed her amended complaint on October 17, 2008. (Doc. 27.)

Pursuant to Rule 4(c)(1) of the Federal Rules of Civil Procedure, "[t]he plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons and complaint." FED. R. CIV. P. 4(c)(1). Rule 4(m) provides as follows:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

FED. R. CIV. P. 4(m).

When managing cases involving *pro se* litigants, the Court must take into consideration the difficulties an individual faces in bringing forward their case without the benefit of legal representation. However, the Court must also balance the defendants' right to a fair and timely resolution of the litigation, and therefore *pro se* litigants are not to be accorded any special consideration when they fail to adhere to readily-comprehended court deadlines. *See Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991).

The amended complaint was filed on October 17, 2008, and therefore Rule 4(m) allowed Plaintiff McCarty until February 17, 2009, to effect service of process on the Defendants. Plaintiff has failed to do so. Therefore, I suggest that, unless Plaintiff is able demonstrate good cause for

the failure to serve Defendants in her objection to this Report and Recommendation, the case be *sua sponte* dismissed.

III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: March 20, 2009

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, served on Dorothy Althea McCarty by First Class Mail, and served on U.S. District Judge David M. Lawson in the traditional manner.

Dated: March 20, 2009

By s/Mimi D. Bartkowiak
Law Clerk to Magistrate Judge Binder